



**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/198,004	11/23/98	CARVER	E 116310.014

IM22/1105
MARK D GIARRATANA
CUMMINGS AND LOCKWOOD GRANITE SQUARE
700 STATE STREET
P O BOX 1960
NEW HAVEN CT 06509-1960

EXAMINER

ALEXANDER, L

ART UNIT

PAPER NUMBER

1743

DATE MAILED: 11/05/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/198,004

Applicant(s)
Carver et al.

Examiner
Lyle A. Alexander

Group Art Unit
1743



☒ Responsive to communication(s) filed on Aug 13, 1999

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1, 3-6, 31, and 33-44 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1, 3-6, 31, and 33-44 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 1743

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

^{1,3-6}
2. Claims ~~1-6~~, 40 and 42-44 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-28 of U.S. Patent No. 5,840,254. Although the conflicting claims are not identical, they are not patentably distinct from each other because both are directed to a similar apparatus encompassing a means for pumping a fluid stream, means for introducing at least one reagent mixture to the stream and means for analysis.

Claim Rejections - 35 USC § 102

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

^{1, 3-6 31, 33-41}
4. Claims ~~1-6~~ and ~~31-41~~ are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Hansen et al., Cruzan or Parrent et al.

Art Unit: 1743

The cited prior art all teach methods and apparatus encompassing the claimed means for pumping a fluid stream, means for introducing at least one reagent mixture to the stream and means for analysis of the stream.

Response to Arguments

5. Applicant's arguments filed 8/13/99 have been fully considered but they are not persuasive.

Applicants state Cruzan teaches a flow rate ratio fixed by relative volumes of the two conduits rather than an adjustment of a flow ratio as presently claimed. Cruzan teaches in column 1 lines 62-66 an oscillator means for imparting flow oscillation to at least a portion of the fluid passing therethrough. The Office reads this as the claimed means for adjusting the flow rate because not all of the fluid is allowed to pass.

Applicants state both Hansen et al. and Parrent et al. teach blocks for receiving hypodermic needles which cannot be read on the claimed means for adjusting the flow rate. The Office maintains the flow rate of the different sized syringes will be different and has been properly read on the instant claims.

Claims 42-44 have been indicated as free of Hansen et al., Cruzan and Parrent et al.

The 8/13/99 IDS does not comply with 37 CFR 1.97 and has not been considered.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 1743

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A. Alexander whose telephone number is (703) 308-3893.

LAA

November 4, 1999



LYLE A. ALEXANDER
PRIMARY EXAMINER